

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

SAMANTHA ZAMORA, ) Case No. 3:16-CV-5028-RK  
 )  
 Plaintiff, )  
 )  
 VS. )  
 )  
 STELLAR MANAGEMENT GROUP, )  
 INC., )  
 ) November 9, 2016  
 Defendant. ) Kansas City, Missouri

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TRANSCRIPT OF TELEPHONE CONFERENCE  
BEFORE ROSEANN KETCHMARK  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

For Plaintiff: Andrew S. Buchanan  
(Via speakerphone) Buchanan Williams & Stilley, PC  
7908 Bonhomme  
Suite 200  
St. Louis, Missouri 63105

For Defendant: Lance Roskens  
(Via speakerphone) Taylor Stafford Clithero  
Fitzgerald & Harris, LLP  
3315 East Ridgeview  
Suite 1000  
Springfield, Missouri 65804

Regina A. Lambrecht, RDR, CRR  
United States Court Reporter  
400 E. 9th Street, Suite 8652  
Kansas City, MO 64106

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EXHIBIT

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1 THE COURT: The witnesses didn't object?

2 MR. ROSKENS: Correct.

3 THE COURT: Did the subpoena -- I don't have that in  
4 front of me -- did it advise these witnesses of the scope of  
5 the search that you planned, that -- that you were basically  
6 going to search their whole inventory history?

7 MR. ROSKENS: The subpoena just states to have them  
8 produce the -- all the messages between themselves and the  
9 plaintiff, the plaintiff's attorney law firm, or the  
10 plaintiff's husband and to produce the phone for inspection.

11 THE COURT: Oh, it does say for inspection?

12 MR. ROSKENS: Well, I mean, you check the portion  
13 that asked for things to be produced for inspection on the  
14 subpoena if I recall correctly.

15 THE COURT: Let me see. Production. You're to  
16 produce -- have you -- to me this just seems overly broad  
17 discovery request, and, you know, these folks, these witnesses  
18 are lay witnesses. They're not experts, and -- and they may  
19 not be very savvy in what they can agree to do or what's -- do  
20 you -- have you done this with other witnesses in the past?

21 MR. ROSKENS: I do not provide legal advice to  
22 individuals that I don't represent if that's what you're  
23 asking me.

24 THE COURT: Oh, I'm sorry.

25 MR. ROSKENS: I have not provided them any advice as

1 to whether or not they should object or it whether it should  
2 be objectionable. I don't represent them. And if they  
3 haven't -- if they had an objection, I certainly would have  
4 attempted to work with them to try to figure out a way that we  
5 could meet any objections that they may raise. But no  
6 objections were ever raised.

7 THE COURT: Have you asked other witnesses in other  
8 cases to produce their phone so you could make an image of all  
9 their historical data?

10 MR. ROSKENS: I have not. I've never had an  
11 instance before where a witness has testified that the  
12 plaintiff offered them compensation to testify and then told  
13 me the text messages were on the phone different than what he  
14 has. So this is a unique situation.

15 THE COURT: Are you familiar with any other case in  
16 where this was approved?

17 MR. ROSKENS: I've never researched the issue,  
18 because as I said, there was never any opposition raised.

19 THE COURT: Well, I'm just sua sponte making this an  
20 issue whether, you know, the defense counsel raises it or  
21 these witnesses' attorney raised it, I just have a hard time  
22 with that practice, that line of practice. And I would like  
23 you to brief your ability to subpoena such a wide scope of  
24 discovery of such personal information that may contain  
25 passwords, financial information, work related material. So

1 I -- I do want you to brief that before you obtain any phones  
2 or image any phones of your witnesses or the defense witness  
3 without their clear understanding of what you are doing, that  
4 their phones are being imaged and all of the contents,  
5 historical data is being copied for your review or potential  
6 review.

7 So aside from the phones, do you have any problem, then,  
8 with Mr. Perez producing any actual messages that he can  
9 produce or communications that he can produce on the November  
10 15th deposition day? Does that --

11 MR. ROSKENS: No.

12 THE COURT: Does that satisfy your motion for  
13 contempt regarding those messages of Jose Perez?

14 MR. ROSKENS: You mean if he has -- if he produces  
15 them there, then that's -- I mean, I think he's still in  
16 contempt. If he shows up and he doesn't produce anything, I  
17 think he's double contempt. But, I mean, I don't have any  
18 issue with him complying with it. I just want to get the  
19 message.

20 THE COURT: Okay. Okay. Well, then that -- that's  
21 where we are with Jose Perez, that he should comply with the  
22 subpoena but to honor that when he conveniently sees you on  
23 November the 15th during the deposition. But until you  
24 receive approval from the Court, from me, to physically obtain  
25 that phone of this witness, or any other witness, I want you

1     you know, just ridged rules and just getting, you know,  
2     discovery. Go ahead.

3             MR. ROSKENS: If I may, this is Lance Roskens. The  
4     third party didn't comply with the subpoena. It has nothing  
5     to do with my ability to work with Mr. Buchanan. Mr. Buchanan  
6     did not, as far as I'm aware, instruct either of these  
7     individuals not to comply with the subpoena. There is no  
8     guarantee, that given that they would not comply with my  
9     subpoena, that they will comply with any subpoena issued by  
10    Mr. Buchanan. This isn't an issue, in my opinion, of -- of  
11    failure of me and Mr. Buchanan to work together. This is  
12    simply a third party that ignored -- two third parties that  
13    ignored subpoenas. And that's why we're at where we're at  
14    now.

15            I could call Andrew and talk about it, but it's not going  
16    to do any good because Andrew doesn't represent these  
17    individuals, as far as I'm aware.

18            THE COURT: Are you able to subpoena both DeLeon and  
19    Jose Lopez-Perez for November 15th to produce the texts and to  
20    answer questions regarding those communications in addition to  
21    what you've done on your deposition notice?

22            MR. BUCHANAN: Is that for Andrew Buchanan, Your  
23    Honor? Is that directed to me?

24            THE COURT: That's directed to Mr. Roskens. Can --  
25    can you notice up both David DeLeon and Jose Lopez to produce

1     those communications on November the 15th and to answer  
2     relative questions regarding those -- that production of those  
3     communications?

4             MR. ROSKENS: I would have to look at Rule 45. My  
5     recollection is that there is a notice requirement I think of  
6     10 days, I may be wrong, that a third party must have before  
7     being required to produce documents. If that is the case, and  
8     like I said, I'd have to look at the rule to know for certain,  
9     then, no, I would not be able to have these individuals served  
10    with a subpoena to have things produced on the 15th, unless  
11    that subpoena was not going to be valid.

12            THE COURT: Are they able to waive that? I'd have  
13    to look at the rules. There's got to be a way you can issue a  
14    subpoena under a certain situation like this. Let me look.  
15    Well, good grief. If they don't object to the 10-day rule,  
16    can't you try to issue them a subpoena and see if they appear  
17    and see if you can get your communications? And if they show  
18    up without any, that you would have a court reporter and you  
19    can ask them, "Today you didn't produce any. Why didn't you?"  
20    And then you can take that record to the Court and I could be  
21    more informed on what the back story is to why you're not  
22    receiving the material you're asking for.

23            MR. ROSKENS: I guess I could if the Court is going  
24    to impose upon my client additional costs and expenses and  
25    serving -- having another subpoena served and issued to an

1 individual who's already refused to comply with it, if that's  
2 what the Court wants us to do, then yes, I could do that.

3 THE COURT: Well, I'm ordering that, yes. Do that,  
4 please. And also brief fully the request for phones, and do  
5 not issue a subpoena for the phones until you receive approval  
6 from the Court after briefing. So does that take care of our  
7 motion for contempt, Mr. Roskens?

8 MR. ROSKENS: What are we going to do if they don't  
9 appear, Judge?

10 THE COURT: Well, we'll take that as it's handed to  
11 us.

12 MR. ROSKENS: Okay.

13 THE COURT: But I'm going to assume that they will  
14 at least show up at that location on the 15th. At that point  
15 you will be at least able to ask on the record and get them --  
16 get their answer. But right now it's kind of hard to just  
17 assume what's going on. That's -- that's not a good position  
18 for me to be in. And if they don't show up --

19 MR. ROSKENS: My client is also going to have to  
20 incur the cost then of another court -- court reporter's fee,  
21 transcript fee for another deposition here. The federal rules  
22 do not require, of course, the deposition for production of  
23 documents. But you're indicating to me that I need to depose  
24 Mr. DeLeon if he should show up and doesn't bring anything?

25 THE COURT: I think under the rules when you issue a